

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JESSE WARD,

Plaintiff,

- against -

CARIB NEWS, INC.,

Defendant.

Docket No. _____

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Jesse Ward (“Ward” or “Plaintiff”), by and through his undersigned counsel, as and for his Complaint against Defendant Carib News, Inc. (“Carib News” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act and for the removal and/or alteration of copyright management information under Section 1202(b) of the Digital Millennium Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of two (2) copyrighted photographs of Vanessa Gathers owned and registered by Ward, a New York-based photojournalist. Accordingly, Ward seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

1. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.* This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

2. This Court has personal jurisdiction over Defendant because Defendant resides in and/or is doing business in New York.

3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

4. Ward is a professional photojournalist in the business of licensing his photographs to online, print, and television stations for a fee, having a usual place of business at 3255 Shore Parkway, #3H, Brooklyn, New York 11235. Ward's photographs have appeared in many publications around the United States.

5. Upon information and belief, Carib News is a corporation duly organized and existing under the laws of the State of New York, with a place of business at 35 West 35th Street, Suite 705, New York, New York 10001. Upon information and belief, Carib News is registered with the New York Department of State, Division of Corporations to do business in the State of New York. At all times material hereto, Carib News has owned and operated a website at the URL: <http://www.nycaribnews.com/> (the "Website").

STATEMENT OF FACTS

A. Background and Plaintiff's Ownership of the Photograph

6. On or about February 23, 2016, Ward photographed Vanessa Gathers, the first woman exonerated by the Conviction Review Unit of the Brooklyn District Attorney's Office. One photo shows Ms. Gathers outside of the State Supreme Court in Brooklyn (the "Purple Jacket Photograph") and the other photograph shows Ms. Gathers inside the courtroom (the "Smile Photograph" and, together with the Purple Jacket Photograph, the "Photographs"). True and correct copies of the Photographs are attached hereto as Exhibit A.

7. Ward then licensed the Photographs to the *New York Daily News* (“Daily News”). On February 23, 2016, the Daily News ran an article that featured the Photograph on its web edition entitled, “Scarcella DA probe leads to vacated manslaughter conviction.” See <http://www.nydailynews.com/new-york/nyc-crime/scarcella-da-probe-leads-vacated-manslaughter-conviction-article-1.2541181>. Ward’s name was featured in the gutter credits identifying him as the photographer of the Photographs. A true and correct copy of the Daily News article featuring Plaintiff’s Photographs is attached hereto as Exhibit B.

8. Ward is the author of the Photographs and has at all times been the sole owner of all right, title and interest in and to the Photographs, including the copyrights thereto.

9. The Photographs were registered with the U.S. Copyright Office and were given Copyright Registration Number VA 2-004-880.

B. Defendant’s Infringing Activities

10. Upon information and belief, on or about February 24, 2016, Carib News ran an article on the Website entitled “Brooklyn DA unit will exonerate woman wrongfully convicted because of tactics of disgraced ex-cop Louis Scarcella.” See <http://www.nycaribnews.com/latest-news/brooklyn-da-unit-will-exonerate-woman-wrongfully-convicted-because-tactics-disgraced-ex>. The article prominently features the Photographs. A true and correct copy of the article is attached hereto as Exhibit C.

11. Carib News did not license Plaintiff’s Photographs, nor did Carib News have Plaintiff’s permission or consent to publish the Photographs on its Website.

12. Upon information and belief, Carib News removed Ward’s gutter credits and did not attribute the Photographs to anyone.

FIRST CLAIM FOR RELIEF

(COPYRIGHT INFRINGEMENT AGAINST CARIB NEWS)
(17 U.S.C. §§ 106, 501)

13. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-12 above.

14. Carib News infringed Plaintiff's copyright in the Photographs by reproducing and publicly displaying the Photographs on its Website. Carib News is not, and has never been, licensed or otherwise authorized to reproduce, publicly display, distribute and/or use the Photographs.

15. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright, in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

16. Upon information and belief, the foregoing acts of infringement by Carib News have been willful, intentional and purposeful, in disregard of and with indifference to Plaintiff's rights.

17. As a result of Defendant's infringement of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to recover his damages and Defendant's profits pursuant to 17 U.S.C. § 504(b).

18. Alternatively, Plaintiff is entitled to statutory damages up to \$150,000 per work infringed for Defendant's willful infringement of the Photographs, pursuant to 17 U.S.C. § 504(c).

19. Plaintiff further is entitled to his attorney's fees and full costs pursuant to 17 U.S.C. § 505.

20. Defendant's conduct described above is causing and, unless enjoined and restrained by this Court, will continue to cause Plaintiff irreparable injury that cannot be fully compensated by or measured in money damages. Plaintiff has no adequate remedy at law.

SECOND CLAIM FOR RELIEF
INTEGRITY OF COPYRIGHT MANAGEMENT INFORMATION
AGAINST CARIB NEWS
(17 U.S.C. § 1202)

21. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-20 above.

22. When the Photographs were published in the Daily News, the article contained copyright management information under 17 U.S.C. § 1202(b).

23. Upon information and belief, in its article on the Website, Carib News intentionally and knowingly removed copyright management information identifying Plaintiff as the photographer of the Photographs.

24. The conduct of Carib News violates 17 U.S.C. § 1202(b).

25. Upon information and belief, Carib News' falsification, removal and/or alteration of the aforementioned copyright management information was made without the knowledge or consent of Plaintiff.

26. Upon information and belief, the falsification, alteration and/or removal of said copyright management information was made by Carib News intentionally, knowingly and with the intent to induce, enable, facilitate, or conceal its infringement of Plaintiff's copyrights in the Photographs. Carib News also knew, or should have known, that such falsification, alteration and/or removal of said copyright management information would induce, enable, facilitate, or conceal its infringement of Plaintiff's copyright in the Photographs.

27. As a result of the wrongful conduct of Carib News as alleged herein, Plaintiff is entitled to recover from Carib News the damages that he sustained and will sustain, including Plaintiff's attorney's fees and costs, and any gains, profits and advantages obtained by Carib News resulting from its violations of 17 U.S.C. § 1202.

28. Alternatively, Plaintiff may elect to recover from Carib News statutory damages pursuant to 17 U.S.C. § 1203(c)(3) in a sum of at least \$2,500 up to \$25,000 for each violation of 17 U.S.C. § 1202.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Carib News be adjudged to have infringed upon Plaintiff's copyright in the Photographs in violation of 17 U.S.C §§ 106 and 501;
2. That Defendant Carib News be adjudged to have falsified, removed and/or altered copyright management information from the Photographs in violation of 17 U.S.C. § 1202;
3. That, with regard to the First Claim for Relief, Plaintiff be awarded either: a) his actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photograph; or
b) alternatively, statutory damages of up to \$150,000 per copyrighted work infringed pursuant to 17 U.S.C. § 504;
4. That, with regard to the Second Claim for Relief, Plaintiff be awarded either:
a) Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's falsification, removal and/or alteration of copyright management information; or b) alternatively, statutory damages of at

least \$2,500 and up to \$ 25,000 for each instance of false copyright management information and/or removal or alteration of copyright management information committed by Defendant pursuant to 17 U.S.C. § 1203(c);

5. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
6. That Plaintiff be awarded his costs, expenses and attorney's fees pursuant to 17 U.S.C. §§ 505 and 1203(b);
7. That Plaintiff be awarded pre-judgment interest; and
8. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
March 2, 2017

LIEBOWITZ LAW FIRM, PLLC

By: /s/ Kamanta C. Kettle
Kamanta C. Kettle

Richard P. Liebowitz
Kamanta C. Kettle
11 Sunrise Plaza, Suite 305
Valley Stream, New York 11580
Telephone: (516) 233-1660
RL@LiebowitzLawFirm.com
KK@LiebowitzLawFirm.com

Attorneys for Plaintiff Jesse Ward